

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM WERSINGER,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07-262-GMS
)	
BANK OF AMERICA CORPORATION,)	
)	
Defendant.)	

DEFENDANT'S MOTION TO DISMISS

Defendant Bank of America Corporation, by and through its attorneys, moves pursuant to Federal Rules of Civil Procedure 12(b)(1) to dismiss the state law claims asserted in Plaintiff's Complaint for the reasons stated in its Opening Brief.¹

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ *Scott A. Holt*

Sheldon N. Sandler (I.D. No. 245)
 Scott A. Holt (I.D. No. 3399)
 Young Conaway Stargatt & Taylor, LLP
 The Brandywine Building, 17th Floor
 1000 West Street
 Wilmington, DE 19801
 Telephone: (302) 571-6673; (302) 571-6623
 Facsimile: (302) 576-3330; (302) 576-3299
 Email: ssandler@ycst.com; sholt@ycst.com
 Attorneys for Defendant

DATED: June 5, 2007

¹Defendant moves to dismiss Counts III and IV in their entirety. Although Defendant denies the allegations asserted in all counts, including Count I and II, it will reserve answering those counts until after resolution of this motion, so as to prevent "duplicative sets of pleadings" and to avoid "confusion over the proper scope of discovery during the motion's pendency." 5B Wright & Miller, *Federal Practice and Procedure* § 1346, at p. 45 (2004); *Godleski v. Affiliated Computer Servs., Inc.*, 210 F.R.D. 571, 572 (E.D. Va. 2002) (majority rule holds "that the filing of a motion that only addresses part of a complaint suspends the time to respond to the entire complaint, not just to the claims that are the subject of the motion."); *Circuit City Stores, Inc. v. Citgo Petroleum Corp.*, 1994 WL 483463, *4 (E.D. Pa. 1994) (same).